

IN THE
SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA,
Plaintiff and Appellee,

vs.

NO. 30901

DAMON MESTETH,
Defendant and Appellant.

APPELLANT'S BRIEF

LARA ROETZEL
STATE'S ATTORNEY
PENNINGTON COUNTY
130 KANSAS CITY ST. #300
RAPID CITY, SD 57701

MARTY JACKLEY
ATTORNEY GENERAL
STATE OF SOUTH DAKOTA
1302 E. HWY 14, STE. 1
PIERRE, SD 57501

Notice of Appeal was filed on November 18, 2024

TABLE OF CONTENTS

	<u>PAGE NO.</u>
PRELIMINARY STATEMENT	1
JURISDICTIONAL STATEMENT	1
STATEMENT OF THE LEGAL ISSUE	1
FACTUAL BACKGROUND.....	2
PROCEDURAL HISTORY	2
STANDARD OF REVIEW.....	4
LEGAL ANALYSIS	4
CONCLUSION	7
CERTIFICATE OF COMPLIANCE	
CERTIFICATE OF SERVICE	

TABLE OF AUTHORITIES

	<u>PAGE NO.</u>
<u>SOUTH DAKOTA CODIFIED LAW</u>	
SDCL 22-11-6	2
SDCL 22-18-1.1	2
SDCL 22-22-1	2
SDCL 22-22-7.2	3, 5
SDCL 49-31-29.2	2
<u>SOUTH DAKOTA SUPREME COURT CASES</u>	
<u>State v. Banks</u> , 2023 S.D. 39, 994 N.W.2d 230	5
<u>State v. Bear Robe</u> , 2024 S.D. 77, 15 N.W.3d 460	1, 4, 5, 7
<u>State v. Black Cloud</u> , 2023 S.D. 53, 996 N.W.2d 670	2, 5

<u>State v. Martin</u> , 2025 S.D. 15	2, 4
<u>State v. Miles</u> , 2021 S.D. 13, 956 N.W.2d 61	2, 4

PRELIMINARY STATEMENT

Throughout this brief Defendant and Appellant Damon Mesteth will be referred to as “Mesteth.” Plaintiff and Appellee, the State of South Dakota, will be referred to as the “State.” References to the settled record will be referred to as “SR,” followed by the page number from the Clerk’s index. References to the transcript of the Grand Jury proceedings will be designated as “GJ.” References to the transcript of the Arraignment will be designated as “ARR.” References to the transcript of the Status Hearing “SH” followed by the number of status hearing held. References to the transcript of the Change of Plea Hearing will be designated as “COP.” References to the transcript of the Sentencing Hearing will be designated as “ST.” References to the appendix hereto will be designated as “AP.” The appropriate page number will follow each reference.

JURISDICTIONAL STATEMENT

Mesteth appeals from a judgment of conviction for Sexual Contact with Person Incapable of Consenting, entered on October 25, 2024, and filed on October 31, 2025, before the Honorable Matthew Brown, Seventh Judicial Circuit Court Judge, Rapid City, Pennington County, South Dakota. (SR, 459). Appeal is by right pursuant to SDCL § 23A-32-2. Notice of appeal was filed on November 18, 2024. (SR, 166).

STATEMENT OF THE LEGAL ISSUE

The trial court’s imposition of a ten-year sentence constituted an abuse of discretion because it relied on the prejudicial effect of dismissed charges while it failed to properly consider the mitigating factors present in this case, including the defendant’s difficult childhood, his history of substance abuse, his commitment to rehabilitation, and the low to moderate risk determined by his psychosexual evaluation.

State v. Bear Robe, 2024 S.D. 77, 15 N.W.3d 460
State v. Black Cloud, 2023 S.D. 53, 996 N.W.2d 670

State v. Martin, 2025 S.D. 15
State v. Miles, 2021 S.D. 13, 956 N.W.2d 61

FACTUAL BACKGROUND

On July 23, 2023, police responded to a complaint of rape. (SR, 155). The victim, Clevia Arapahoe (Arapahoe), and Mesteth had been drinking together at Irene Clifford's apartment, in Rapid City, SD. (GJ, 4 and SR, 97). Arapahoe eventually went to bed on the couch, laying down on her stomach. (GJ, 5-6). Before Arapahoe had fallen asleep, she felt Mesteth on top of her, pulling her jeans and underwear with one hand and holding her head down with the other hand. (SR, 97). Mesteth then started having nonconsensual intercourse with her while Arapahoe tried to call 911 on her phone. Arapahoe reported that she felt a metal object touch the back of her head while Defendant was on top of her. (SR, 97). A small screwdriver was found at the scene. Officers responded to the scene because of Arapahoe's phone call to 911. Law enforcement kicked down the apartment door and arrested Mesteth. (SR, 98). Mesteth had a PBT of .247 at the time of his arrest. Mesteth did not give any statements to law enforcement.

PROCEDURAL HISTORY

On July 25, 2023, the State filed a Complaint against Mesteth charging him with 4 Counts. (SR, 1). Count 1 was a charge of Second Degree Rape in violation of SDCL 22-22-1(2), a class 1 felony; Count 2 was a charge of Aggravated Assault in violation of SDCL 22-18-1.1(5), a class 3 felony; Count 3 was a charge of Interference With Emergency Communication in violation of SDCL 49-31-29.2(2), a class 1 misdemeanor; Count 4 was a charge of Obstructing a Public Officer in violation of SDCL 22-11-6, a class 1 misdemeanor.

Mesteth appeared for his Initial Appearance in front of the Honorable Janki Sharma on July 25, 2023. (IA). His bond was set at \$100,000, cash. (IA, 13). An Indictment mirroring Counts 1-3 of the Complaint was filed on August 10, 2023. (SR, 30). A Part 2 Information was filed on August 10, 2023, as well, enhancing Count 1 to a class C felony and Count 2 to a class 2 felony. (SR, 33).

Mesteth was again advised of the charges against him, his rights, and maximum penalties at his Arraignment on September 1, 2023, by The Honorable Matt Brown. (ARR). To all the charges against him, Mesteth pled Not Guilty. He also denied the Part 2 Information. (ARR, 7; SR, 180).

Status hearings were held on October 6, 2023, November 3, 2023, December 22, 2023, and January 29, 2024. (SR, 183;188;194). On August 15, 2024, pursuant to a plea agreement, Mesteth entered a guilty plea to an Amended Complaint/ Information¹ charging him with Sexual Contact with Person Incapable of Consenting in violation of SDCL 22-22-7.2, a class 4 felony, punishable with up to 10 years in the penitentiary or \$20,000 fine, or both. (SR, 87; COP, 4; SR, 200; SR, 105). The Part 2 Information was dismissed pursuant to the plea agreement. (SR, 105). The parties characterized the plea as a benefit of the bargain, Alford plea, allowing the trial court to rely on the record for a factual basis. (SR, 198; COP, 2).

Following the Change of Plea Hearing, Judge Brown signed an Order for a Psychosexual Evaluation on August 20, 2024. (SR, 86). A PSI and Psychosexual Evaluation were completed in preparation for sentencing. (SR, 87; 155).

¹ Mesteth waived the preliminary hearing on the Amended Complaint and an Information was filed. (SR, 198; COP, 2).

Sentencing for Mesteth took place on October 25, 2024. At that hearing, the State asked that the court impose the maximum penalty of 10 years of imprisonment, while Mesteth asked for a sentence of 5 years with credit for time served. (ST, 5; SR, 209; ST,7; SR, 211).

During the sentencing hearing, Mesteth's counsel argued for a lesser sentence, citing Mesteth's willingness to take accountability for the offense and the low to moderate risk determined by his psychosexual evaluation. (ST, 6; SR, 210). Despite these mitigating factors, the court imposed a sentence of ten (10) years in the state penitentiary. The court, taking into account facts from the original charges, imposed a 10-year penitentiary sentence on Mesteth. (ST, 9; SR, 213). Mesteth appeals the court's sentence. (SR, 166).

STANDARD OF REVIEW

"We generally review a circuit court's decision regarding sentencing for abuse of discretion." State v. Miles, 2021 S.D. 13, ¶ 6, 956 N.W.2d 61, 64.

"An abuse of discretion is a fundamental error of judgment, a choice outside the range of permissible choices, a decision, which, on full consideration, is arbitrary or unreasonable." State v. Bear Robe, 2024 S.D. 77, ¶ 11, 15 N.W.3d 460, 465. "This Court ... will not overturn the circuit court's abuse of discretion unless that 'error is demonstrated and shown to be prejudicial error.'" State v. Martin, 2025 S.D. 15, 4.

LEGAL ANALYSIS

"Sentencing courts possess broad discretion '[w]ithin constitutional and statutory limits' to determine 'the extent and kind of punishment to be imposed.'" State v. Martin, 2025 S.D. 15. "We have said that 'circuit courts must look at both the person before them

and the nature and impact of the offense.” State v. Bear Robe, 2024 S.D. 77, ¶ 12, 15 N.W.3d 460, 465. “The circuit court should weigh, on a case-by-case basis, the traditional sentencing factors of retribution, deterrence, rehabilitation, and incapacitation without giving any particular factor preeminence[.]” State v. Black Cloud, 2023 S.D. 53, ¶ 66, 996 N.W.2d 670, 686. “The court “must consider sentencing evidence tending to mitigate or aggravate the severity of a defendant's conduct and its impact on others. Sentencing courts are often required, in this regard, to accurately assess the ‘true nature of the offense.” State v. Banks, 2023 S.D. 39, ¶ 18, 994 N.W.2d 230, 235.

This is an appeal from a judgment of conviction after Mesteth pled guilty to one count of Sexual Contact with Person Incapable of Consenting, a class 4 felony, in violation of SDCL 22-22-7.2. Mesteth was sentenced to serve a term of ten years in the state penitentiary, the statutory maximum. Mesteth contends that the sentence imposed by the trial court was an abuse of discretion, arguing that a sentence of five years in the state penitentiary would have been more appropriate given his personal circumstances, the results of the psychosexual evaluation, and his rehabilitation potential.

In imposing his sentence, the trial judge noted that he did not see a “whole lot of mitigating factors that [he] could point out in this case besides the fact that Mr. Mesteth did plead guilty to an offense.” Mesteth disagrees. (COP, 7; SR, 211).

Mesteth grew up in an environment marked by childhood hardships such as abuse, neglect, and family dysfunction. (SR, 156). His father was killed in a bar fight when Mesteth was 6, and his mother was absent, often incarcerated. He was passed around between an aunt, a foster family, and group homes until he became an adult. (SR, 155-156). Mesteth was also sexually abused as a child. (SR, 156). The traumatic events

that he suffered during his formative years have contributed to significant emotional and psychological trauma, which Mesteth continues to struggle with to this day. It is without a doubt that Mesteth's hard childhood and the trauma associated with it played a significant role in his criminal behavior. Mesteth's past trauma, combined with his ongoing struggles with substance abuse, provides a compelling argument for a more lenient sentence. The court should have taken into account the potential for rehabilitation through treatment and counseling, which may be more effectively achieved in a shorter sentence.

A significant issue in the Mesteth's life is his longstanding battle with alcohol addiction. (SR, 155, 87). His alcohol use has been identified as a contributing factor to his criminal conduct, and he has acknowledged that his drinking has impaired his decision-making and behavior. In his PSI, Mesteth expressed a willingness to engage in treatment for his alcohol addiction, which is a key factor in preventing future criminal conduct. A sentence of five years would have provided Mesteth with the opportunity to participate in rehabilitation programs designed to address his substance abuse issues while also holding him accountable for his actions.

Mesteth's psychosexual evaluation indicated a low-to-moderate risk of reoffending sexually, suggesting that his criminal behavior was more closely tied to his substance abuse issues and his emotional trauma rather than an inherent risk of future sexual offenses. (SR, 159). Thus, treatment and rehabilitation would be beneficial to address his underlying issues of substance abuse and emotional distress instead of prolonged incarceration. A ten-year sentence appears excessive when compared to the evaluation's conclusion.

The trial court is required to balance the seriousness of the offense with the defendant's individual characteristics and the goals of sentencing. In this case, the court's failure to give appropriate weight to the defendant's difficult upbringing, substance abuse issues, and the psychosexual evaluation undermines the fairness of the sentence.

Further, a sentence of ten years in the penitentiary for a Class 4 felony appears disproportionate to the circumstances in this case. South Dakota law requires that sentences be tailored to the individual characteristics of the defendant and the nature of the offense. State v. Bear Robe, 2024 S.D. 77, ¶ 12, 15 N.W.3d 460, 465. However, in this case, the sentencing court decided on a sentence as if Mesteth was being punished for the crime of Second-Degree Rape, a class 1 felony, which is not what Mesteth pled to. The Court classified Mesteth's offense as a "violent, malicious attack." (SR, 212; COP 8). The court continued to state that [he] could "not wrap [his] mind around the level of depravity that this case exemplifies." (SR, 212; COP, 8). Again, Mesteth pled guilty to Sexual Contact with a Person Incapable of Consenting, a class 4 felony; violence or force are not elements of that crime. Therefore, the reasoning given for the imposition of a maximum ten-year sentence is disproportionate to the offense Mesteth pled guilty.

CONCLUSION

For the reasons outlined above, the defendant respectfully requests that this Court vacate the trial court's sentence and remand the case with instructions to impose a sentence of five years in the South Dakota state penitentiary which would be more appropriate given the mitigating circumstances and the defendant's low to moderate risk of reoffending.

Dated this 21st day of March 2024.

Respectfully submitted,

DUFFY LAW FIRM

/s/ Ilisja Duffy

Ilisja Duffy

Attorney for Defendant/Appellant

1321 Mount Rushmore Rd.

Rapid City, SD 57701

(605) 939-7936

CERTIFICATE OF COMPLIANCE

I certify that Appellant's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Times New Roman typeface in 12-point type. Appellant's Brief contains approximately 2,011 words and is 7 pages in length.

I certify that the word processing software used to prepare this brief is Microsoft Word Version 16.44.

/s/ Ilisja Duffy
Ilisja Duffy

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 24th day of March 2025, a true and correct copy of the foregoing Appellant's Brief was served via Odyssey File and Serve, at the e-mail addresses listed below, upon these individuals:

Marty Jackley
atgservice@state.sd.us

Lara Roetzel
larar@pennco.org

/s/ Ilisja Duffy
Ilisja Duffy

APPENDIX

JUDGMENT.....	1.1
---------------	-----

STATE OF SOUTH DAKOTA,)
)SS
COUNTY OF PENNINGTON.)

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,)
Plaintiff,)

File No. CRI23-2934

vs.)

JUDGMENT

DAMON JUSTIN MESTETH,)
DOB: 1/4/77)
Defendant.)

Appearance at sentencing:

Prosecutor: Roxanne Hammond Defense attorney: Greg Sperlich

Date of sentence: 10/25/24

Date of offense: 7/22/23

Charge: Sexual Contact with Person Incapable of Consenting

Class: 4 Felony SDCL: 22-22-7.2

Plea of guilty entered on 8/15/24

CRIME QUALIFIER: (CHECK IF APPLICABLE):

- ☐ Accessory 22-3-5 ☐ Aiding or Abetting 22-3-3 ☐ Attempt 22-4-1
☐ Conspiracy 22-3-8 ☐ Solicitation 22-4A-1

Habitual offender admitted on: _____

- ☐ SDCL 22-7-7 ☐ SDCL 22-7-8 ☐ SDCL 22-7-8.1

Part 2 Information (DUI) admitted on _____

- ☐ Third Offense; SDCL 32-23-4 ☐ Fourth Offense; SDCL 32-23-4.6
☐ Fifth Offense; SDCL 32-23-4.7 ☐ Sixth or Subsequent Offense; SDCL 32-23-4.9

Part 2 Information (ASSAULT) admitted on _____

- ☐ SDCL 22-18-1

Part 2 Information (VPO DV/ VNCO DV) admitted on _____

- ☐ SDCL 25-10-13

☒ The Defendant having pled guilty and the Court finding the plea was made knowingly and voluntarily, and with a sufficient factual basis for the entry of the plea and having asked whether any legal cause existed to show why judgment should not be pronounced, and no cause being offered:

IT IS HEREBY ORDERED THAT the Defendant is sentenced to serve:

10 years in the South Dakota Penitentiary with 0 suspended and 453 days credit plus each day served in the Pennington County jail.

- ☐ Fully Suspended Pen

Check if applicable:

- ☐ The sentence shall run concurrent with ____.
- ☐ The sentence shall run consecutive to ____.

- ☒ That Defendant pay court costs of \$116.50.
- ☒ That Defendant's attorney's fees will be a civil lien pursuant to SDCL 23A-40-11.
- ☒ That Defendant pay prosecution costs: UA \$____, Drug Test \$____, Blood \$____, SART Bill \$____; Transcript \$142.10.
- ☐ That Defendant pay prosecution costs from dismissed file ____: UA \$____, Drug Test \$____, SART Bill \$____; Blood \$____, Transcript \$____.
- ☐ That Defendant pay the statutory fee of \$____ DUI, \$____ DV.
- ☐ That Defendant pay fines imposed in the amount of \$____.
- ☐ That the Defendant pay restitution through the Pennington County Clerk of Courts in the amount of \$____ to ____.

Other Conditions:

- ☒ NCO with Clevia Arapahoe for 10 years
- ☐ _____

☐ Pursuant to SDCL 22-6-11, a Court shall sentence a Defendant convicted of a Class 5 or Class 6 felony to a term of probation unless the Court finds aggravating circumstances exist that pose a significant risk to the public and require a departure from presumptive probation; and the Court having found the following aggravating factors exist justifying a deviation, to-wit:

- | | |
|--|---|
| <input type="checkbox"/> Failure to comply with terms of probation | <input type="checkbox"/> Criminal history |
| <input type="checkbox"/> Poor performance on bond | <input type="checkbox"/> Multiple files |
| <input type="checkbox"/> Escalating behavior | <input type="checkbox"/> Picking up new files while on bond |
| <input type="checkbox"/> Failure to accept responsibility | <input type="checkbox"/> On Parole when committed offense |
| <input type="checkbox"/> _____ | |

Pursuant to agreement of the parties, the State's Attorney is dismissing all remaining counts to include any Part II information, if applicable.

10/31/2024 2:48:37 PM

Attest:
Ricke, Jolonda
Clerk/Deputy



BY THE COURT:


HON. MATTHEW M. BROWN CIRCUIT JUDGE

You are hereby notified you have a right to appeal as provided for by SDCL 23A-32-15. Any appeal must be filed within thirty (30) days from the date that this Judgment is filed.

1.2

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 30901

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

DAMON JUSTIN MESTETH,

Defendant and Appellant.

APPEAL FROM THE CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT
PENNINGTON COUNTY, SOUTH DAKOTA

THE HONORABLE MATTHEW M. BROWN
Circuit Court Judge

APPELLEE'S BRIEF

Ilisja Duffy
Duffy Law Firm
1321 Mt. Rushmore Rd.
Rapid City, SD 57701
Telephone: (605) 939-7936
Email: ilisja@duffylaw.us

ATTORNEY FOR DEFENDANT
AND APPELLANT

MARTY J. JACKLEY
ATTORNEY GENERAL

Erin E. Handke
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605) 773-3215
E-mail: atgservice@state.sd.us

ATTORNEYS FOR PLAINTIFF
AND APPELLEE

Notice of Appeal filed November 18, 2024

TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES	ii
PRELIMINARY STATEMENT.....	1
JURISDICTIONAL STATEMENT	1
STATEMENT OF LEGAL ISSUE AND AUTHORITIES.....	2
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS.....	3
ARGUMENT	
THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION WHEN IT SENTENCED MESTETH TO TEN YEARS IN PRISON	5
CONCLUSION.....	9
CERTIFICATE OF COMPLIANCE.....	10
CERTIFICATE OF SERVICE	10

TABLE OF AUTHORITIES

CASES CITED	Page
<i>State v. Arabie</i> , 2003 S.D. 57, 663 N.W.2d 250	7
<i>State v. Bear Robe</i> , 2024 S.D. 77, 15 N.W.2d 460	2, 8
<i>State v. Blair</i> , 2006 S.D. 75, 721 N.W.2d 55	6
<i>State v. Bruce</i> , 2011 S.D. 14, 796 N.W.2d 397	6, 7
<i>State v. Chipps</i> , 2016 S.D. 8, 874 N.W.2d 475	6
<i>State v. Delehoy</i> , 2019 S.D. 30, 929 N.W.2d 103	6
<i>State v. Holler</i> , 2020 S.D. 28, 944 N.W.2d 339	6
<i>State v. Klinetobe</i> , 2021 S.D. 24, 958 N.W.2d 734	6
<i>State v. Martin</i> , 2025 S.D. 15, --N.W.2d--	9
<i>State v. McKinney</i> , 2005 S.D. 74, 699 N.W.2d 460	7
<i>State v. Mitchell</i> , 2021 S.D. 46, 963 N.W.2d 326	6
<i>State v. Rice</i> , 2016 S.D. 18, 877 N.W.2d 75	2, 6, 7
<i>State v. Toavs</i> , 2017 S.D. 93, 906 N.W.2d 354	2, 6

STATUTES CITED

SDCL 15-26A-66(b).....	10
SDCL 22-18-1.1(5).....	2
SDCL 22-22-1(2).....	2
SDCL 22-22-7.2.....	2
SDCL 23A-32-2	2
SDCL 49-31-29.2(2).....	2

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 30901

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

DAMON JUSTIN MESTETH,

Defendant and Appellant.

PRELIMINARY STATEMENT

In this brief, Appellant, Damon Justin Mesteth, is referred to as “Mesteth.” Appellee, the State of South Dakota, is referred to as “State.” The victim in this case is referred to by her initials, “C.A.” References to documents are designated as follows:

Settled Record (Pennington Criminal File No. 23-2934) SR

Change of Plea Transcript (August 15, 2024) CP

Sentencing Transcript (October 25, 2024).....ST

Appellant Mesteth’s Brief..... AB

All document designations are followed by the appropriate page number(s).

JURISDICTIONAL STATEMENT

On October 25, 2024, the Honorable Matthew M. Brown, Circuit Court Judge, Seventh Judicial Circuit, entered an oral sentence with the written Judgment of Conviction filed on October 31, 2024. SR 162-63.

Mesteth timely filed his Notice of Appeal on November 18, 2024. SR 166.

This Court has jurisdiction under SDCL 23A-32-2.

STATEMENT OF LEGAL ISSUE AND AUTHORITIES

WHETHER THE CIRCUIT COURT ABUSED ITS DISCRETION
WHEN IT SENTENCED MESTETH TO TEN YEARS IN
PRISON?

The circuit court sentenced Mesteth to ten years in prison on
one count of sexual contact with a person unable to consent.

State v. Bear Robe, 2024 S.D. 77, 15 N.W.2d 460

State v. Rice, 2016 S.D. 18, 877 N.W.2d 75

State v. Toavs, 2017 S.D. 93, 906 N.W.2d 354

STATEMENT OF THE CASE

The Pennington County grand jury indicted Mesteth on the
following charges:

- Count 1: Second-Degree Rape, a Class 1 felony, contrary to SDCL 22-22-1(2),
- Count 2: Aggravated Assault, a Class 3 felony, contrary to SDCL 22-18-1.1(5),
- Count 3: Interference with Emergency Communication, a Class 1 misdemeanor, contrary to SDCL 49-31-29.2(2).

SR 30. The State also filed a Part II Information, alleging Mesteth had a
prior felony conviction for driving under the influence, third offense.

SR 33.

After plea negotiations, the State filed an amended complaint and
information alleging Mesteth committed the crime of Sexual Contact with
a Person Incapable of Consenting, contrary to SDCL 22-22-7.2, a Class 4
felony. SR 83-85. The circuit court held a change of plea hearing, where

Mesteth plead guilty to the charge in the amended complaint. CP 4-6. The State dismissed the remaining charges and the Part II Information. CP 2, SR 162. At the sentencing hearing, the court sentenced Mesteth to ten years in prison with credit for 453 days previously served. SR 162-63.

STATEMENT OF FACTS

On July 21, 2023, C.A. (DOB 09/21/1986) went to the Family Inn in Rapid City to visit a friend. SR 113 (Sealed Document). When she got there, she discovered her friend had already left, but her friend's mother, Irene Clifford, told C.A. she was welcome to stay at the apartment. SR 113 (Sealed Document). C.A. agreed. SR 113 (Sealed Document). She started talking with Mesteth, who was also at the apartment. SR 113 (Sealed Document). C.A. told Mesteth she had gotten into a fight with her daughter earlier and she was upset about it. SR 113 (Sealed Document). Mesteth offered to help C.A. clean up so she would feel better. SR 113 (Sealed Document). Mesteth then demanded C.A. "repay" him for helping her. SR 113 (Sealed Document). He asked if she would have sex with him. SR 113 (Sealed Document). She refused. SR 113 (Sealed Document).

Mesteth told C.A. to get him a drink, and the two drank whiskey together. SR 113 (Sealed Document). Eventually C.A. told Mesteth she was tired and wanted to go to sleep. SR 114 (Sealed Document). She laid down on the couch, on her stomach. SR 114 (Sealed Document). At

some point, Mesteth climbed on top of C.A., pulled her shorts and underwear down with one hand, while forcing her head down with the other hand. SR 114 (Sealed Document). C.A. tried to move and get Mesteth off her, at which point he inserted his penis in her vagina. SR 114 (Sealed Document). Mesteth pushed on the back of her head several times, to the point that C.A. saw black. SR 114 (Sealed Document). Mesteth also told C.A. to “shut the fuck up” several times while holding her down so she could not get up. SR 114 (Sealed Document). He also held a metal object to the back of her neck. SR 114 (Sealed Document). C.A. thought it was a knife*. SR 114 (Sealed Document).

When Mesteth finally got off C.A., she called 911 asking for help. SR 114 (Sealed Document). But Mesteth knocked the phone out of her hand, and it slid under the couch. SR 114 (Sealed Document).

A short time later, law enforcement arrived at the Family Inn. SR 112 (Sealed Document). Through the window, Officer Garret Mastin could faintly see two people on the couch, by the front door. SR 112 (Sealed Document). He could see a male holding a female down on the couch. SR 112 (Sealed Document). He knocked on the door with no response. SR 112 (Sealed Document). Believing the female inside

* Law enforcement did not find a knife at the scene. However, they did find a screwdriver. SR 111 (Sealed Document). It is believed that is the metal object Mesteth held to the back of C.A.’s neck. SR 109, 117 (Sealed Document).

needed help, he kicked the door until it opened. SR 112 (Sealed Document). After entering the apartment, Officer Mastin noticed Mesteth peeking out from the back room. SR 112 (Sealed Document). He noted that Mesteth was the same male he saw on top of the woman on the couch. SR 112 (Sealed Document).

Ultimately, Mesteth was arrested and a PBT showed his blood alcohol level was .247. SR 112 (Sealed Document). Officers spoke to Clifford, but she said she was unaware of an assault as she had been sleeping. SR 112 (Sealed Document).

When speaking to law enforcement, C.A. told officers that she was on her period, and still had her tampon in when Mesteth assaulted her. SR 114 (Sealed Document). Officers noticed blood on her shorts, appearing to be fresh. SR 114 (Sealed Document). She was taken to the hospital where a SART kit was completed. SR 114 (Sealed Document).

ARGUMENT

THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION WHEN IT SENTENCED MESTETH TO TEN YEARS IN PRISON.

Mesteth argues the circuit court disregarded mitigating factors when fashioning his sentence and he should have only been given five years in prison. AB 4-7. But the circuit court was thoroughly familiar with Mesteth and imposed a sentence it deemed appropriate for his crime.

A. *Standard of Review.*

“A circuit court's sentencing decision is generally reviewed for an abuse of discretion.” *State v. Holler*, 2020 S.D. 28, ¶ 10, 944 N.W.2d 339, 342 (citing *State v. Chipps*, 2016 S.D. 8, ¶ 31, 874 N.W.2d 475, 486). “An abuse of discretion ‘is a fundamental error of judgment, a choice outside the range of permissible choices, a decision, which on full consideration, is arbitrary or unreasonable.’” *State v. Delehoy*, 2019 S.D. 30, ¶ 22, 929 N.W.2d 103, 108. Consequently, “a sentence within the statutory maximum [generally] will not be disturbed on appeal.” *State v. Rice*, 2016 S.D. 18, ¶ 23, 877 N.W.2d 75, 83 (quoting *State v. Bruce*, 2011 S.D. 14, ¶ 28, 796 N.W.2d 397, 406). Also, “[a]bsent specific authority, it is not the role of an appellate court to substitute its judgment for that of the sentencing court as to the appropriateness of a particular sentence.” *State v. Toavs*, 2017 S.D. 93, ¶ 14, 906 N.W.2d 354, 359 (quoting *State v. Blair*, 2006 S.D. 75, ¶ 20, 721 N.W.2d 55, 61).

B. *The Circuit Court Did Not Abuse Its Discretion When It Sentenced Mesteth to Ten Years in Prison.*

When sentencing a defendant “circuit courts must look at both the person before them and the nature and impact of the offense.” *State v. Mitchell*, 2021 S.D. 46, ¶ 29, 963 N.W.2d 326, 333. The court is also required to “accurately assess the ‘true nature of the offense.’” *Id.*, ¶ 30, 963 N.W.2d at 333 (quoting *State v. Klinetobe*, 2021 S.D. 24, ¶ 36, 958 N.W.2d 734, 742).

“In fashioning an appropriate sentence, courts look to the character and history of the defendant. This requires an examination of a defendant’s ‘general moral character, mentality, habits, social environment, tendencies, age, aversion or inclination to commit crime, life, family, occupation, and previous criminal record’” *Rice*, 2016 S.D. 18, ¶ 27, 877 N.W.2d at 84 (quoting *Bruce*, 2011 S.D. 14, ¶ 29, 796 N.W.2d at 406). The circuit courts also have a broad range of evidence they may consider to learn about a defendant. *State v. McKinney*, 2005 S.D. 74, ¶ 17, 699 N.W.2d 460, 466 (citing *State v. Arabie*, 2003 S.D. 57, ¶ 21, 663 N.W.2d 250, 257). This broad range includes uncharged conduct and crimes for which the defendant was acquitted. *Id.*

Prior to imposing its sentences, the circuit court examined Mesteth’s background, criminal history, age, and prospects for rehabilitation. The circuit court reviewed Mesteth’s presentence investigation report (PSI), which included information about Mesteth’s family, life, criminal record. SR 87-159, ST 7. The court also reviewed the law enforcement reports and psychosexual evaluation that was conducted. *Id.*

The circuit court found Mesteth’s conduct to be a “violent, malicious attack[.]” that was “completely unprompted by the victim in this case.” ST 8. It noted that Mesteth attempted to argue the victim was the aggressor in this case, which the court found “disturbing and disgusting[.]” ST 8.

The circuit court found there were several aggravating factors in this case, such as the violence of Mesteth's attack, Mesteth's lack of empathy, and the aggressive behavior he exhibited. ST 9. The court also found minimal mitigating factors, citing only to the fact that Mesteth pleaded guilty. ST 7.

Mesteth argues the court abused its discretion by not considering other mitigating factors when it sentenced him. AB 5-7. Mesteth points to his "childhood hardships" and his alcohol addiction. AB 5-6. But the court was well informed of Mesteth's character and history. His upbringing and history of alcoholism were included in the PSI, which the circuit court read. ST 7. And during sentencing the court stated there was "simply no excuse for this type of behavior and this kind of damage that individuals do to their victims..." ST 8. So, the court did consider Mesteth's past and determined it did not negate his heinous actions. See *State v. Bear Robe*, 2024 S.D. 77, ¶ 17, 15 N.W.2d 460, 466 (stating it is up to the circuit court to determine how much weight each factor is given when fashioning a defendant's sentence).

Mesteth also claims he is being "punished for the crime of second-degree rape, a Class 1 felony, for which is not what Mesteth pled to." AB 7. While it is true that Mesteth pleaded guilty to a lesser crime of sexual contact, a Class 4 felony, the court did not sentence Mesteth outside the statutory maximum for a Class 4 felony. And just because Mesteth pleaded guilty to a lesser crime, it does not mean the circuit

court could not consider the facts of the case, even if that means the facts support a higher felony charge. Again, the courts have a broad discretion of what they can consider at sentencing, including uncharged conduct and even conduct for which a defendant was acquitted of. *State v. Martin*, 2025 S.D. 15, ¶ 28, --N.W.2d--. It is ludicrous for Mesteth to think that just because he pleaded guilty to a less serious crime, the circuit court cannot consider the facts of the case where he held down victim by pressing a screwdriver to her neck and raped her.

Ultimately, the circuit court considered many factors when sentencing Mesteth. It thoroughly familiarized itself with who Mesteth is by reading the PSI and psychosexual evaluation. It ultimately determined the horrendous crime Mesteth committed warranted a maximum sentence. It therefore did not abuse its discretion when it sentenced Mesteth.

CONCLUSION

Based on the foregoing arguments and authorities, the State requests that Mesteth's conviction and sentence be affirmed.

Respectfully submitted,

MARTY J. JACKLEY
ATTORNEY GENERAL

/s/ Erin E. Handke
Erin E. Handke
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605) 773-3215
E-mail: atgservice@state.sd.us

CERTIFICATE OF COMPLIANCE

1. I certify that the Appellee's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Bookman Old Style typeface in 12-point type. Appellee's Brief contains 1,862 words.

2. I certify that the word processing software used to prepare this brief is Microsoft Word 2016.

Dated this 1st day of May 2025.

/s/ Erin E. Handke
Erin E. Handke
Assistant Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 1st, 2025, a true and correct copy of Appellee's Brief in the matter of *State of South Dakota v. Damon Justin Mesteth* was served electronically through Odyssey File and Serve upon Ilisja Duffy at ilisja@duffylaw.us.

/s/ Erin E. Handke
Erin E. Handke
Assistant Attorney General